

REMARKS

§112 Rejections

The Examiner rejected claims 17 and 19 under 35 U.S. C. §112, 2nd paragraph, as being indefinite. Claims 17 and 19 have been amended to correct the antecedent basis problems associated with these claims. Applicants respectfully request reconsideration.

Restriction Requirement

Applicants note that in response to the restriction requirement of 25 October 1999, Applicants traversed the restriction requirement and provisionally elected claims 11-19 on 10 December 1999. In the subsequent Office Action, the Examiner withdrew claims 1-10, but did not comment on the Applicants' arguments traversing the restriction requirement. As such, Applicants respectfully request the Examiner review the original restriction requirement and subsequent traversal, and provide the current status of the restriction requirement.

§103 Rejections

The Examiner rejected claims 11-13 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent no. 6,243,596 to Kikinis. Further, the Examiner rejected claim 17 under §103(a) over Kikinis in view of U.S. Patent No. 5,978,689 to Tuoriniemi et al., and claim 19 under §103(a) over Kikinis in view of Tuoriniemi and U.S. Patent No. 5,661,788 to Chin. Applicant respectfully disagrees with the Examiner's rejections and requests reconsideration.

Kikinis was apparently filed 3 February 1998, and issued 5 June 2001. As such, the §102(e) effective filing date for Kikinis is apparently 3 February 1998. According to the §1.131 declaration submitted herewith, the inventor of the present application conceived of the invention claimed in the present application no later than 20 May 1997, and the application was pursued with reasonable diligence through the filing of the application on or about 18 February 1998. Therefore, the inventor of the present application conceived of his invention before the effective filing date of Kikinis, and pursued the idea with reasonable diligence until the constructive reduction to practice associated with the filing of a patent application on 18 February 1998. As a result, the filing date of 3 February 1998 is insufficient under §102(e) and MPEP §715 to qualify Kikinis as prior art against the present application.¹

Because the earliest verifiable priority date for Kikinis is 3 February 1998, Kikinis cannot qualify as prior art under §102(e). Therefore, Kikinis cannot qualify as prior art under §103. It necessarily follows that all rejections based on Kikinis are therefore improper. Applicants therefore submit that independent claim 11 defines patentable subject matter over the cited art. Because independent claim 11 defines patentable subject matter over the cited art, dependent claims 12-19 also define patentable subject matter. Applicants respectfully request reconsideration and allowance of the claims.

¹ Applicants note that Kikinis appears to be a continuation-in-part of U.S. Patent Application Serial No. 08/791,249, filed 30 January 1997, which is a continuation-in-part of U.S. Patent Application Serial No. 08/629,475, filed on 10 April 1996. The '475 application ultimately issued as U.S. Patent No. 5,727,159 on 10 March 1998. A review of the '159 patent indicates that the '159 patent does not contain any of the teachings relied upon by the Examiner to reject the claims. As such, the priority date of the '159 patent cannot be a §102(e) priority date for the rejection of the currently pending claims. *In re Wertheim*, 646 F.2d 527, 537, 209 USPQ 554, 564 (CCPA 1981). Further, Applicants were unable to find a copy of the '249 patent application. As such, the earliest verifiable date applicable to the teachings relied upon by the Examiner to reject the pending claims is 3 February 1998. Based on the above, then, Kikinis does not qualify as prior art against the pending application.

Because of the arguments presented above, Applicants submit that claims 11-19 stand in condition for allowance. Therefore, Applicants respectfully request the Examiner reconsider his rejections, and permit the application to move forward in allowance. If any issues remain unresolved, Applicants request that the Examiner call the undersigned so that any such issues may be expeditiously resolved.

Respectfully submitted,

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